



HOUSE SELECT COMMITTEE ON NC RIVER QUALITY

**Thursday, January 4, 2018 at 9:30 a.m.
Room 643 of the Legislative Office Building**

The House Select Committee on North Carolina River Quality (Committee) met on Thursday, January 4, 2018 at 9:30 AM. The meeting was held in room 643 of the Legislative Office Building. Senior Chairman Ted Davis presided and the following Co-Chairs and staff were in attendance: Representatives Grange and Iler, Co-Chairs, Representatives Brisson, Dixon, Floyd, Hall, McElraft, McGrady, Muller, Stone, and Yarborough, members.

Opening Remarks

Representative Davis called the meeting to order and recognized the House Sergeant of Arms, Jonas Cherry, Rey Cook, Dean Marshbourne, and Reggie Sills. He explained that public comment would be allowed for up to one hour at the end of the meeting with a three minute time limit. Anyone that would like to speak should please sign up.

Co-Chairman Representative Frank Iler was recognized and reiterated that this proposed legislation is a short term resolution. This will be an ongoing process, but it certainly won't be solved in one day.

Chairman Davis opened with comments regarding the importance of this meeting because the North Carolina General Assembly will be meeting in a Special Session on January 10, 2018, which is less than a week away. Whatever is passed out of the meeting will allow ample opportunity for the proposed legislation to be forwarded to all members of the House so they can review it before the full body reconvenes on January 10, 2018.

Based on the previous adjournment resolution, the proposed legislation to be discussed today is not eligible to be heard at the January 10, 2018 legislative session. However, the Speaker of the House Tim Moore agrees that the pollution of sources of drinking water is so important we will be allowed to move forward with whatever legislation is passed during our meeting today during the session on January 10, 2018. This shows the House's commitment to move forward and make positive steps in addressing the pollution in our drinking water sources. This proposed legislation

doesn't have everything that everybody wants, however it is a starting point that can be built on and give us momentum as we move to the Short Session. The January 10, 2018 session will be one day, maybe two, so please realize that there is not sufficient time for legislation that is controversial, requires extended debate, or will have to be heard by multiple committees. The legislation will need to be passed by both the House and the Senate during that limited session in order to become law. This committee has been instructed to pursue a non-controversial, short term solution that should be able to pass both the House and the Senate at the upcoming session. The more controversial and time consuming issues can be address during the Short Session.

An effort has been made prior to today to contact stakeholders to be briefed on the proposed legislation. Those who were contacted included Duke Energy, Department of Environmental Quality (DEQ), Coastal Federation, Sierra Club, Southern Environmental Law Center, Environmental Defense Fund, World Water Association, The League of Municipalities, NC Chamber of Commerce, Preston Howard with the Manufacturers Association, the House Democratic Minority Leader Darren Jackson, and Democratic Representative Pricy Harrison who is a committee member and is currently out of the country and unable to attend today. In addition, the Senate leadership has been contacted and briefed so they are aware of the proposed legislation. Any changes made to the proposed legislation could jeopardize the support of this list of stakeholders that currently agree with what we have at this time.

This afternoon, each member of the House will receive a copy of the legislation that is passed today so every member will have the opportunity to review in preparation of the January 10, 2018 Session. An appropriation is an important part of any action that will be taken by the Legislature. The House leadership has been working on possible funding that may be considered with the proposed legislation that is voted out during this meeting at the January 10, 2018 Session. However, this legislation is still a work in progress and a funding package is not ready. If the appropriation piece is ready by the January 10, 2018 Session, the House will move forward at that time. If not, the House will proceed to consider more long term legislation solutions as well as the appropriate supporting funding for consideration during the Short Session, which was the original plan.

Representative Dixon was recognized for comments that seconded Chairman Davis' remarks and highlighted the history regarding the previous administrations and their knowledge of the problems that have been occurring for several years. In 2002, 2003, and 2005 nothing was done to acknowledge the warnings and it seems as if the concerns fell on deaf ears regarding water quality and pollution in the rivers. The current Republican majority in the NC House of Representative is currently working on this issue and taking corrective measures to insure safe drinking water for everyone in the State.

Overview of Proposed Legislation

Jeffrey Hudson, committee staff, was recognized to review the draft legislation that was sent to all committee members on December 22, 2017. Attachment # 2

Following the explanation of section 1, Chairman Davis opened the meeting up for comments on Section 1.

Representative Stone was recognized and commented that the term “consult with” is interpreted by DEQ and the administration as a very collaborative process because the Science Advisory Board (SAB) and its predecessor entity has been made up of very smart individuals with endless academic credentials that looked at the information from a strictly scientific view. He suggested a peer review to validate the 140 parts per trillion number and how that number was established and the possibility of establishing protocols on the health goals and United States Environmental Protection Agency (U.S. EPA) maximum contaminate levels for water quality. The State has the ability to have an interim maximum contaminate level and DEQ and the SAB have established those levels in the past and there are firm numbers which are much more reliable than the health goals. Health goals are just “goals”. Goals versus what is allowable are very different and that needs to be transparent to the public. Perfluorooctanoic acid (PFOA), the predecessor entity to Gen X, which is much more toxic than Gen X, has a state interim maximum allow concentration (IMAC) currently of 2,000 parts per trillion. One Hundred Forty seems very low when the PFOA is at 2,000. In 2012, a recommendation was made by the SAB to the DEQ and Governor to lower that number to 1,600 parts per trillion and that was never implemented. Whatever the number is, the public needs to be confident in the number and how that number was determined.

Chairman Davis commented that he had the opportunity to attend the SAB meeting in Wilmington and was able to meet with the Board and speak to the Chairman. He reiterated the desire to work with the Board to come up with common goals that both could support for submission during the Short Session.

Representative Iler was recognized and asked for the makeup of the SAB and is it dictated by statute?

Jeffrey Hudson responded that the SAB charter was adopted on July 28, 2017 and it sets out a number of powers and duties beyond what is discussed in the bill. It also includes some parameters for membership for the Board. Board membership will be subject to the following additional specifications: a minimum of one doctoral level epidemiologist, preferably with a background in public health or environmental science with a strong background in environmental epidemiology; a minimum of one doctoral level toxicologist, public health scientist or environmental scientist in the private sector who has experience in these areas; the State Epidemiologist or the State Health Director; at least one doctoral level toxicologist or epidemiologist who’s employed by either a state or federal government and has experience in risk assessment; a minimum of one doctoral level scientist having a minimum of five years experience in exposure assessment to air contaminants; a minimum of one doctoral level scientist having a minimum of five years’ experience in exposure assessment to water contaminants; a minimum of one licensed medical doctor, preferably with board certification, occupational or environmental medicine; and a representative from the NC Association of Local Health Directors that serves as a Health Director with experience in environmental health and epidemiology.

The Charter provides that the Board should be composed of 11 voting members appointed by the Secretaries of Environmental Quality and Health and Human Services.

Representative Yarboro was recognized and ask for the definition of “health goals” and if this is a legal term that describes a certain parameter or is this a general term?

Mr. Hudson responded that they have tried to use the terminology that the Department of Health and Human Services (DHHS) has used in the discussion of these emerging compounds, so it is specific to health goals for contaminants, but that could potentially be broader than just the emerging contaminants that are being discussed.

Dr. Tillison, State Health Director and Chief Medical Officer for DHHS was recognized for additional comments. The legality of the term “health goal” is not from a legal or regulatory standpoint, it is not a goal of which regulation could be made on that health goal, so it’s not to be used for regulation. There are other goals or levels that can be used for regulation, but the health goal can be used to help set the regulatory level. As to how broad is the scope of the SAB or this legislation in other health goals. Emerging contaminants are relatively new. Most of the contaminants we have known, we have a lot of information on with health goals and regulatory levels. Health and Human services were used to establish health goals or regulatory levels to do the risk communication and health advisories. This is a new world of unregulated chemicals that will not have those set levels. So, as we go forward and work to regulate chemicals and set health goals, the scope of what is discussed may be broadened because it’s a world of unregulated compounds. The work between the DEQ, DHHS, and SAB is to be collaborative to take full advantage of the science and expertise.

Representative Floyd was recognized for a question on line 16 regarding recommendations to improve the process. Would those recommendations turn into statutes?

Dr. Tillison was recognized and stated that the health goals are provisional. Where there is limited to no data, we set initial, provisional health goals. As more information, studies and input then that health goal is subject to change based on the new information. The provisional health goals are not regulatory, but DEQ and the regulatory entities that are in place can use that non-regulatory health goal to establish regulatory goals depending on the evidence.

Representative Floyd was recognized for a follow-up question and asked if these goals are in conflict with existing statutes and would recommendations be brought forward to this committee to change the existing statutes to make them more applicable to the legislation?

Mr. Hudson said this legislation is broad enough to encompass the goals if the SAB or other departments determine there are statutory issues that impede the provisional health goals that they would come back to this committee and others in the General Assembly and ask for changes to the statutes if necessary.

Representative Stone was recognized and stated that DHHS and DEQ have been using health goals as a regulatory number. If anything is over that certain number then denial of permits and other discussions follow. Health goals are not regulatory but they are being used as a regulatory standard. Emerging compounds and unregulated contaminants are not that new but we are finding more information because the testing methods that we have now are much more detailed than in

years past. Also, the U.S. EPA has a protocol for dealing with unregulated contaminants and emerging compounds with assessment of the chemicals. What is that protocol?

Dr. Tillson was recognized and stated that unregulated contaminants and emerging contaminants are not necessarily new, it's just the way we are dealing with them is relatively new. We have 80,000 chemicals and they haven't been looked for or measured. The methodology has changed when looking for targeted chemicals.

Sheila Holman the Assistant Secretary of Environment with DEQ was recognized for comments. The U.S. EPA process of unregulated contaminant monitoring rule, identifies up to about 30 compounds for each round. They haven't established regulations but they think those particular compounds may present a health risk. This process starts with monitoring by state agencies as well as some of the wastewater dischargers. At the same time, they gather health data on the different compounds and move forward to determine if a new national water quality standard should be established.

Representative McElraft was recognized and asked how many mass spectrometers do we have at DHHS and how many do we have at DEQ?

Sheila Holman responded that currently the DEQ does not have any high resolution mass spectrometers, which is the equipment that is needed to conduct a non-targeted analysis. DHHS doesn't have that high resolution equipment either.

Mr. Hudson was recognized to review the remaining sections of the bill with no questions from the Committee on sections two through five.

Representative Brisson was recognized and asked if all the agencies are in agreement with the draft legislation and are they confident that they have personnel and equipment to move forward or will it require more funding?

Chairman Davis replied that staff had talked with DEQ about the legislation and they are supportive of the draft. The House is looking at an appropriation that would assist in implementing the legislation. If everything is ready on January 10, 2018, the House will proceed. If not, then this committee will resume with more long term goals with consideration during the Short Session that will include an appropriate funding piece to accompany the legislation.

Representative Floyd was recognized and asked if the Senate was on board with the proposed legislation?

Chairman Davis replied that if the Senate doesn't take action, the plan to move forward during the Short Session will continue.

Representative Dixon was recognized for a comment related to funding. The funding is not the first issue. The priorities are listed and if funding is needed, then how much.

Chairman Iler was recognized and asked if this bill needs to go to any other committee prior to the January 10, 2018 Special Session?

Chairman Davis responded that whatever is passed during committee will go straight to the House floor for a vote.

Public Comment Section

Chairman Davis opened up the public comment section of the meeting. These minutes are verbatim.

Matthew Starr, Upper Neuse Riverkeeper

Chairman and members, thank you for allowing public comment even though a majority of the public was not able to attend today. It's been over 600 days since scientists told the Cape Fear Public Utility Authority (CFPUA) that Chemours was dumping GenX into the Cape Fear River and all this legislation does is kick the can down the road for the foreseeable future while asking already crippled agencies to fix a problem without restoring the tools to do so. As we have learned, this is not just a Wilmington problem. It is a state of North Carolina problem. GenX and other types of chlorinated compounds or other chemicals have been found in 11 counties meaning that millions of people's drinking water could be affected. We need more than reactive studies. We need proactive investment in the health of our environment. This committee has the opportunity to take real action, to show the great folks of North Carolina they are more important than a mega polluter who hasn't once apologized or shown a bit of remorse for contaminating our water and endangering our own citizens. Instead, this bill would heap even more responsibilities on agencies already hard-pressed to perform their missions after years of budget cuts and legislative interference. Without additional funding, you are asking agencies to protect our health and to choose between protecting the air our kids breathe, the water our kids drink, or some terrible other decision. Thank you.

Sam Perkins, Catawba Riverkeeper

Thank ya'll for having me today. My name is Sam Perkins and I represent the Catawba Riverkeeper Foundation. We cover the Catawba River basin. The Catawba is a dense layer cake of discharges and drinking water intakes so this is a major concern for us as well. I have a Master of Science from Chapel Hill in Geo Chemistry and Hydrology and I'm currently engaged in research on the subject of perfluorinated and other compounds. This bill is a start, but the race has started. It takes a shot that is more akin to a few BB's, but you need a well-placed .45 or two and you have some good targets in the crosshairs and I think you've been discussing some of them today. We need it now because it takes a tremendous amount of time to provide the data and resources that will give something to better inform these scientific advisory boards, the state's DEQ, yourselves, and future decision makers. Fund our top universities. I have three degrees from Carolina so I don't say this lightly but we have great work going on at Duke and NC State. Funding them is an investment that you will not regret. Fund DEQ to see if industry and dischargers are being honest. I mean, basically auditing the discharge with a high resolution mass specs are definitely something that we need. These investments are not controversial, they are

common sense and I would really encourage you today to get that ball rolling for proper due diligence to take place. It will show North Carolinians that you truly are serious because there is no commitment quite like financial commitment. There was a time when mercury and PCB's (polychlorinated biphenyls) and lead were emerging contaminants where we didn't know much about them and we have regretted not doing anything sooner. Industry insisted as recently as 1978 that there was no harm caused by blood lead levels being at 75 micrograms per deciliter or less. Long story short, after ratcheting it down, the prevailing regulatory level is less than 5 especially for children. No North Carolinian deserves this trespass on their bodies of chemical that should not be in the natural environment. Thank for the opportunity to comment and I hope we can continue to be a resource.

Mary McClain Asbill, Southern Environmental Law Center

I appreciate the opportunity to speak today. I'm speaking on behalf of my organization and behalf of the Cape Fear River Watch and other groups on the Coast who were unable to travel to Raleigh today because it's state of emergency where they live and as much as they would have loved to come and given public comments, they are unable to. I want to make clear that my organization was afforded the opportunity to meet twice with the Speaker's staff and we really appreciate that dialogue and engagement. But let me be clear, we do not support this bill and I have let Speaker's staff and this committee know that. We have submitted detailed proposals to this committee about what actions we believe you can take right now to begin working on this problem. I would like to emphasize a few points about this draft legislation you've offered today.

This bill starts some studies that aren't due or won't be completed until December which means it's putting off any meaningful action until at least 2019. Meanwhile, people still aren't able to drink their water. Second, it doesn't adequately fund the only agencies able to effectively respond and the only agency that has effectively responded to this crisis, DEQ. Yet it asks them to conduct numerous studies with already strained staff. Thirdly, it doesn't do anything to clarify that the Department of Environmental Quality has the legal authority to set standards now to protect our water, even despite your Hardison amendment. Fourth, it doesn't do anything to address the GenX that Chemours is emitting into the air, which recent studies, data, evidence, show appears to be a major source of contamination in people's wells and in the river. Lastly, there is no reason that this body cannot take the time needed next week to fully address this. We've heard a lot of talk today about "we must have this one day session or we must have this one possibly two day session." No one's given a reason why it has to be so short, why ya'll can't take the time to deliberate and work with the Senate to come up with actual actions that will help this situation. I would encourage you to take the time to do it now since you're coming back to town. In short, this bill asks an already strained agency to do more with less and does nothing to help the people who can't drink their water. As I've said, we've submitted detailed proposals to you yesterday, I hope that those will be included in the record and again thanks for the opportunity to speak. Representative Davis, if I may, you should check with that long list of stakeholders that you read. I'm not sure all of those entities have endorsed or supported this bill. All appreciate being invited I'm sure, but you should check.

Will Hendrick, Waterkeeper Alliance

Thank you Chairman Davis and members of the Committee for allowing this public comment. My name is Will Hendrick and I work with Waterkeeper Alliance. I'm based in Chapel Hill. I have co-workers in New Bern and Boone and we collaborate with Riverkeepers, some of whom you've heard from today throughout the state of North Carolina to address a myriad threats to water quality. It is lamentable that it took a public health crisis to create this committee, but I am sincerely appreciative of the new found focus and concern about water quality that is represented here today. As for the bill under consideration, I believe, and I congratulate it's drafters for showing appropriate deference to the agencies that house and appoint the necessary expertise to respond to this problem. Too often the legislature has been tempted to muddle, despite the lack of requisite credentials. On this committee, honorable North Carolinians trying to do their best but ya'll have rose through the ranks of law and business and farming and there aren't toxicologist, there aren't hydrogeologist, there aren't epidemiologist capable of responding with the necessary expertise at the Legislature. So I do appreciate that this bill recognizes that is not within this building that the solution can arise. However, I would like to also commence to this committee and this larger body to allow those agencies to do what they must. Over the course of recent years, those agencies have been strangled and shackled by this legislature and so I urge you to allow them to protect by restoring the resources necessary. They've labored under a series of draconian budget cuts and you are now literally asking them to do more with less. More to the point, I urge you to restore the regulatory flexibility necessary for them to respond as they deem appropriate. The Hardison Amendment referenced earlier essentially states that North Carolinians working at North Carolina agencies with requisite expertise cannot afford more protection to North Carolinians than federal regulators housed outside of this state with less familiarity than we do. And so I think North Carolinians should be allowed to protect North Carolina's water and I would in closing agree with the lamentations earlier that nothing was done in the past, but also urge the same individual who recognized that lack of activity to heed the voices of warning that you're now hearing. Thank you.

Drew Ball, Environment North Carolina

Thank you Mr. Chairman. I'm Drew Ball the Director of Environment North Carolina. I want to thank the Committee and the Staff for braving the snow to be here today even though there are many concerned citizens who are unable to join us. The formation of this committee has been a positive step, however, on behalf of Environment North Carolina members across the State and the countless number of people concerned about what chemical dumping means to their health and the health of their families--I have to say it's disheartening to see that today's bill fails to put any money towards actually addressing the issue. That fact alone sends the wrong signal. That our elected leaders are not taking this issue seriously. It is good to see this bill ordering review of many processes and requiring that DEQ share its information about GenX and other contaminants with neighboring states, but the bill fails to provide any money for testing, research, permitting staff, or other responses to this widening pollution issue. Given what we know, that GenX and other compounds have been found in about two-thirds of the 350 wells tested so far across the eastern half of our state, many of which are far outside of the Wilmington area, and that these chemicals could be airborne--it's apparent that the funding provided to the Wilmington Air Utilities and UNC Wilmington last year to study the problem is inadequate. Our citizen's drinking water is contaminated and people are demanding more than just studies, they're demanding action. Hundreds of people have packed high school auditoriums and public hearing rooms across the State not because they are curious, but because they are concerned and they're frightened about

the very real health consequences on them, their families and their communities. So the fact that the Bill fails to adequately fund DEQ to do their job is alarming. It is my understanding, and the Department can speak for themselves, but the Department believes that any short term solution for January should include appropriations. I believe this committee wants to get this right and so I respectfully ask that the Committee act immediately to fund DEQ to do their job of protecting our air and water. Thank you for this opportunity to speak.

Emily Sutton, Haw Riverkeeper

Thank you for the opportunity to speak. My name is Emily Sutton and I'm the Haw Riverkeeper. As we learn from the research and monitoring projects surrounding GenX and the other contaminants of emerging concern, we know that this problem is much larger than the Cape Fear basin. North Carolinians have been drinking contaminated water in many basins across the State and without adequate funding this bill does nothing to address those concerns. According to a press release in August, since 2013 DEQ has seen approximately 70 positions eliminated that once supported permitting, compliance, and enforcement programs. DEQ is responsible for monitoring 38,000 miles of waterways. To add the enormous task of monitoring and regulating contaminants of emerging concern without supplying them the adequate support does not protect citizens of our state. This problem is larger than GenX. We have found perfluorooctanesulfonic acid (PFOS) and PFOA, 1,4-Dioxine, Hexavalent Chromium, and many other proflourinated compounds and the list continues to grow. We need precautionary rules within industrial facilities to prevent them from putting unknown chemicals into public wastewater streams or direct discharges into our surface waters. Thank you.

Harper Peterson, Citizen

Good morning Mr. Chairman. My name is Harper Peterson and I'm from Wilmington, North Carolina and I also want to mention that many people wanted to come but were unable to because of the weather. Mr. Chairman, it's been months since this story broke and we have learned a lot and I think the most important thing we've learned is we don't know a lot. I think the Governor appropriately addressed this by calling for a state of emergency and requesting from the General Assembly emergency funding to address this environmental and health crisis. This is a crisis, this is not a process. Commenting on the draft legislation, I think it's a good start and it's long overdue. What's missing, and I think the speakers before me have stated, is investment. In your wisdom, you invested through [HB 56, Amend Environmental Laws \(S.L. 2017-209\)](#), your \$50,000 to UNC-Wilmington and I believe another \$180,000 to the CFPUA to address a crisis and that was five months ago. I haven't heard any results and I would like to hear some comment if you are in the Session today regarding what have we found out with that investment of public dollars. I too attended the SAB Committee's meeting on December 4, 2017, that you mentioned you attended. The one thing, the one take away was we don't (being the scientist) have the data to make recommendations. We need the appropriate academics, the experts, and the scientists to make those recommendations. They need data. They need to study this. And that's where I think you could appropriate some money because they're not going to be able to come back with any solid, definitive recommendations. With regard to DEQ, we have a 40 percent backlog in permitting. We need money. We need staff to do that work and I would put money there. There is an investment opportunity. At the end of the day, as a layman, people ask me constantly "is the water

safe to drink?” I can’t answer that and I take a precautionary approach and I think we all should. We shouldn’t be drinking the water. When someone asks my wife “is it safe to drink the water?” and she says “no, I’ve had three miscarriages and I’m not drinking the water and I wouldn’t suggest you drink the water”. I think this committee and this legislative body should make a strong recommendation not to drink the water until we have some definitive results and to do that, we need investment. The number one priority of this committee is the action we take today and with the recommendations you make on January 10, 2018. Thank you.

Jon Carr, Attorney and Lobbyist on behalf of the North Carolina Rural Water Association

Good morning Mr. Chairman and members of the Committee. Thank you all for convening and for meeting today. I’m an attorney here in Raleigh and a lobbyist standing before you on behalf of the North Carolina Rural Water Association. Rural is probably a misnomer. We represent over 95 percent of the State’s water and wastewater utilities and our membership includes CFPUA. I want to indicate to you that we are supportive of the legislation before you today as an appropriate step in the process and thank you again for convening.

This concluded public comment and Representative Dixon was recognized for a motion to approve the proposed legislation for consideration to the General Assembly. Move for a favorable report on approving this proposed legislation to go before the House. The motion passed.

The Committee adjourned at 11:06.

Respectfully submitted,

Representative Ted Davis, Jr., Chair

Carla Langdon, Committee Clerk